NO. 86-429

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IN THE

Supreme Court of the United States

October Term, 1986

JOHNNY J. DOTSON and
DANIEL FINN BLOCH,

Petitioners

v.

THE MOUNTAIN MISSION SCHOOL, INC., ET AL,

Respondents

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Is Dotson a proper party to this proceeding?

2. Has Bloch stated a claim of damage or shown evidence of injury sufficient to support this Petition?

3. Having previously denied a Petition for a Writ of Certiorari attacking the constitutionality of Section 63.1-218 of the 1950 Code of Virginia, as amended, should the Court consider yet another Petition made by the same petitioner in the same proceeding?

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STATEMENT OF THE CASE

The petitioner, Daniel Finn Bloch, was convicted in 1978 for the felonious abduction of two children from the Mountain Mission School. Upon return after their abduction, the two infant boys related that they had also been sexually molested by Bloch. Investigation revealed that although Mr. Bloch had been charged previously with sexual crimes against minor boys, the charges were not prosecuted to their conclusion. However, the abduction of the two boys from Mountain Mission School was prosecuted, and Mr. Bloch pleaded guilty. After pleading guilty to the felony charges and serving his jail sentence, the petitioner embarked upon a course of conduct which, by his own admission, was intended to do nothing more than punish the Mountain Mission School, the party whom he held responsible for his felony convictions.

In pursuing his vendetta against the Mountain Mission School, and all persons connected with it, Mr. Bloch has instituted suit in his own name, as well as in the names of any other individuals who may be willing to participate in his scheme for revenge. Mr. Bloch, although not an attorney licensed to practice in any of the fifty states, apparently prepares all the pleadings in all of the suits filed against the School as well as all the affidavits submitted to the various courts, and serves as custodian for all of the "evidence" which he alleges supports his claims against the School.

Having failed to overturn his conviction through his habeas corpus petitions, Bloch now contents himself to sue all judges, public officials, commonwealth attorneys, FBI officials, and all manner of public and private citizens whom he considers to be involved in the entry of

the Order of Conviction based upon his plea of guilty to the felony charges. To do this, Bloch alleges a conspiracy which he has been unable to support by even the slightest scintilla of competent evidence before any judicial tribunal, state or federal, and proceeds to list as a defendant each individual, judge or governmental official who fails to join his crusade for revenge. In this fashion, the petitioner continues to use the courts as a sounding board for advancing his otherwise slanderous and libelous statements. To further his cause, while insulating himself from tort action, Bloch forwards his pleadings to the news media with the representation that the distortions and fabrications contained therein constitute "evidence" supporting his various claims.

On appeal from an initial summary dismissal by the Federal District Court in

September, 1979, the U. S. Fourth Circuit Court of Appeals, after affirming a large portion of the Order of summary dismissal, remanded this matter to the Federal District Court for the Western District of Virginia with specific instructions that the plaintiff be given every reasonable opportunity to present all credible and competent evidence to support his allegations. Unable to supply any evidence to support his contentions, the Federal District Court again dismissed this suit, with said dismissal being affirmed by the Fourth Circuit Court of Appeals by Order and Memorandum Opinion dated May 2, 1986. This Petition then is from the June 5, 1986, Order denying the Petition for Rehearing.

ARGUMENT

I

PETITIONER DOTSON IS NOT A PROPER PARTY TO THESE PROCEEDINGS.

By Order of the Federal District Court for the Western District of Virginia, Johnny Dotson was dismissed as a petitioner in this suit. On appeal, this dismissal was affirmed by the Fourth Circuit Court of Appeals [Dotson v. Mountain Mission School, No. 79-1771 (4th Cir., Oct. 18, 1982) (unpublished), Slip op. at 23] wherein that Court held "the entire complaint on behalf of Dotson against the defendants . . . was properly dismissed for the reasons we have expressed." On October 27, 1982, a Petition for Rehearing was filed with the Fourth Circuit Court of Appeals, with said rehearing being denied by Order dated November 12, 1982. On December 15, 1982,

a Notice of Intent to Seek Further Appellate Review was filed with the Clerk of the Fourth Circuit Court of Appeals indicating the intent to petition this Court for a petition for writ of certiorari. In that proceeding, the petitioners herein did not proceed pro se, but were represented by counsel of record throughout all stages of the appeal.

The Petition for Certiorari, which specifically raised the issue as to whether or not Dotson was a proper party to this proceeding, was denied by Order of this Court dated March 21, 1983. Accordingly, all appeals having been exhausted, the Order dismissing Dotson as a party to this proceeding is final and Bloch should be precluded from rearguing this issue again on subsequent appeal in the same case.

Even if Dotson had not been dismissed from this proceeding by final order of the

Court, he has not petitioned this Court and by failing to petition this Court for certiorari within the time permitted by the Rules of this Court, he is no longer a party herein, and the Order of the Fourth Circuit Court of Appeals is final in all respects as to him. The pro se Petition filed by Bloch alone, does not thereby serve to make Dotson a proper party in these appellate proceedings.

II

PETITIONER BLOCH HAS FAILED TO STATE A CLAIM AND PRESENT EVIDENCE OF DAMAGE SUFFICIENT TO SUPPORT HIS PETITION FOR THIS WRIT.

Rule 21.1(a) of the Supreme Court Rules applicable to the Petition for a Writ of Certiorari states specifically that "only the questions set forth in the Petition or fairly included therein will be considered by the Court." Accordingly, there are only three questions presented by the appellants for review in support of

their Petition. These issues will be addressed in the order presented by the petitioner for review.

The petitioner first asks the Court to create a new "class" of individuals whom he alleges were the victims of a discriminatory animus. However, notwithstanding his interest to participate in this "landmark" determination, Bloch has been wholly unable to sustain even the most minimum burden of proof to survive the previous Motions to Dismiss. Only three months after this suit was filed, the Court by Order and Memorandum Opinion summarily dismissed the Complaint against all defendants. On appeal, the Fourth Circuit Court of Appeals affirmed the District Court's dismissal of eight issues, but also stated that

> Given that pro se pleadings must be read liberally, we think that the plaintiffs must be afforded the opportunity to develop a claim under both halves of Section 1985(2) and under Section

> 1985(3) on remand in the district court if the other prerequisites for a suit under these provisions are present . . . [I]t is true that the text of the Complaint fails even to mention many of the named defendants. There are many serious allegations, however in which the actor is not named. Since pro se complaints must be read liberally, we think that it was premature to dismiss defendants on this basis at this stage of the proceedings. A number of the defendants objected to the vagueness of the Complaint and demanded strict proof. Instead of outright dismissal, the plaintiffs should be required to clarify their allegations. When this has been done, a number of summary dismissals may well be appropriate. (Dotson, supra, Slip op. at 12 and 19-20.)

Upon remand, after repeated opportunities and extended time periods within which to submit evidence by deposition, affidavit or otherwise, the plaintiff was unable to present any competent evidence to support his claims under both halves of Section 1985(2) and under Section 1985(3), even after having been admonished by the Court to do so or suffer another dismissal. Accordingly, after affording Bloch this

opportunity on remand, the District Court again entered judgment for the defendants. On appeal, the Fourth Circuit Court of Appeals, in reference to the allegations under the first half of Section 1985(2) stated that

> The District Court found that Bloch's conclusory allegations of a conspiracy between Persin and Sublett were insufficient to create a genuine issue of material fact on the existence of a conspiracy to prevent Bloch from testifying in Federal Court. We agree. (Page 6.) (Dotson v. Mountain Mission School, No. 85-2009 (4th Cir. May 2, 1986) Slip op. at 6.)

In responding to the allegations of injury under the second half of Section 1985(2) and Section 1985(3) the Fourth Circuit held that

> Applying the Supreme Court's decision in Scott, the district court here found that animus against orphans is animus motivated by their economic status and is therefore outside the scope of Section 1985(3). We agree that, in light of the Supreme Court's decision in Scott and our decisions in Harrison and Buschi, the animus allegedly motivating the conspiracy in this

> case does not implicate the protections of Section 1985(3) or the second half of Section 1985(2) . . . . In view of the laws protecting orphans in the absence of discriminatory animus similar to that faced by the victims of Klan violence, we conclude that orphans do not constitute a protected class within the meaning of Section 1985(3) or the second half of Section 1985(2). [Citations omitted.] (Dotson, supra, No. 85-2009, Slip op. at 12-13.)

Accordingly, the Fourth Circuit Court of Appeals, in May of 1986, reached the same conclusions that were reached by the Federal District Court in September of 1979. That conclusion is that, no matter how "novel" the issues are which Bloch seeks to present to the Court, he has been wholly unable to support his bare and conclusory allegations with any competent or credible evidence which would permit further inquiry.

The second question presented for review set forth in the Petition is "do overt acts of a conspiracy over a period

of years connect the conspirators?" Appellees do not contest this general statement which apparently is intended to mean that conspirators may be connected to a conspiracy through their overt acts undertaken in furtherance of the conspiracy, or its aims. However, this "question" does not present anything before this Court that needs to be "reviewed" on appeal.

As a pro se plaintiff, Bloch has been given every reasonable opportunity to present competent evidence that the conspiracy he alleges actually exists. Without first proving that a conspiracy exists, it is impossible to proceed against "conspirators", or connect unrelated individuals to it.

Question number three is merely an attempt to relitigate the final order of the Federal District Court as affirmed by the Fourth Circuit Court of Appeals and

arguably reaffirmed by this Court through the denial of the previously requested Writ of Certiorari. All Courts have, by final order, found Section 63.1-218 of the 1950 Code of Virginia, as amended, constitutional. The prior resolution of the appeals on that issue in favor of the statute as discussed in more detail infra, should preclude any further argument against the constitutionality of this statute.

III

HAVING ONCE BEEN DENIED A PETITION FOR A WRIT OF CERTIORARI ON THEIR ATTACKS OF SECTION 63.1-218 OF THE 1950 CODE OF VIRGINIA, AS AMENDED, IN THIS SAME CASE, THE COURT SHOULD NOT CONSIDER A SUBSEQUENT PETITION MADE BY THE SAME PETITIONERS CHALLENGING THE SAME STATUTE IN THE SAME CASE.

The petitioner herein challenged the constitutionality of Virginia Code Section 63.1-218 of the 1950 Code of Virginia, as

amended, in his original complaint filed in the Federal District Court for the Western District of Virginia. However, in Paragraph 6 of said Complaint, Bloch alleges only that Petitioner Dotson suffered injuries as a consequence of that statute. Bloch was never a student at the Mountain Mission School, nor is it anywhere alleged that he is an orphan or a member of the "class" of orphans which he asks this Court to create. Furthermore, there has been no showing that Bloch has ever been a student at, or resident of, or had any other connection with any other private school or charitable institution which may be affected by Virginia Code Section 63.1-218. Accordingly, Bloch would have no standing in his own right to challenge the constitutionality of the statute before this Court, and as noted above Dotson is not a proper party to this proceeding by virtue of both his dismissal

by prior final order of the Court, and by his failure to join in this Petition for a Writ of Certiorari and is, therefore, not before the Court as a petitioner.

In addition to the asserted lack of standing and Dotson's subsequent dismissal as a party to this suit, the constitutionality of the Virginia Code Section in question has been fully litigated by these parties and has been resolved by final order. By Order of the United States District Court for the Western District of Virginia dated September 19, 1979, and subsequent Memorandum Opinion dated November 2, 1979, all allegations and complaints raised by the Petitioners were dismissed. Petitioners then filed a Motion for Reconsideration before the Federal District Court, and at the same time, filed a Notice of Appeal to the Fourth Circuit Court of Appeals. By Order

and Memorandum Opinion of the Circuit Court dated October 18, 1982, the Court upheld the constitutionality of the Virginia Code Section in question noting that although the plaintiffs had failed to join proper party defendants to challenge the statute, they found the statute to be constitutional. Accordingly, the District Court's dismissal of the challenge to the constitutionality of the Virginia statute 63.1-218 was affirmed on appeal by the Fourth Circuit Court of Appeals.

A Motion for Consideration was subsequently filed by the Petitioners, and denied by the Court of Appeals, and a Petition for a Writ of Certiorari was then sought and denied by this Court on March 21, 1983. This is the same proceeding between these parties, and the Court has previously refused a Writ of Certiorari on this issue.

CONCLUSION

Because of his pro se status, the lower courts have granted opportunity upon opportunity to the appellant to support his bare and conclusory allegations that were set forth in his Complaint filed back in June of 1979. This case has been once remanded by the Fourth Circuit Court of Appeals to allow the appellant to submit some competent or credible evidence to substantiate his claims. This the appellant was unable to do. The conclusion then is not that the petitioner presents a "new" or "novel" theory of recovery which should be determined by this Court, but rather that, even if the Court should adopt the petitioner's construction of Section 1983 and 1985, he has not been able to produce any evidence to substantiate his claims.

The record below is as clear as it is voluminous and shows that the appellant

desires only to use these proceedings as a "safe harbor" from which to slander the School through his libelous pleadings. Mr. Bloch should not be awarded additional opportunity to abuse the judicial process in his vendetta against the Mountain Mission School by using the courts as a forum in which to attack the School, and all those connected with it, with impunity. Accordingly, for the reasons stated herein, and for those cited by both the Fourth Circuit Court of Appeals and the Federal District Court for the Western District of Virginia, appellants respectfully request that the Petition for a Writ of Certiorari be denied, and that they be awarded their costs in this proceeding.

Respectfully submitted,

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JAMES SWINEY,

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CERTIFICATE

I hereby certify that forty copies of the foregoing Brief in Opposition to Petition for Writ of Certiorari were filed with the Clerk of the Supreme Court of the United States and three copies were mailed,

postage prepaid, to Daniel F. Bloch, petitioner pro se, 110 Pearl Avenue, Sarasota, FL 34234; Linwood T. Wells, Jr., Esq., 101 N. 8th Street, Richmond, VA 23219; Birg Sergent, Esq., P. O. Box 426, Pennington Gap, VA 24277; E. Montgomery Tucker, P. O. Box 1709, Roanoke, VA 24008; James P. Jones, Esq., P. O. Box 2009, Bristol, VA 24203; Mr. & Mrs. Charles Lambert, 104 River Road, Ellwood City, PA 16117; Edward Sawyer, P. O. Box 630306, Ojus, FL 33163; Robert B. Hines, 101 S. Washington Ave., Millersburg, OH 44654; Gene W. Holliker, State Office Tower, 30th Floor, 30 E. Broad Street, Columbus, OH 43215; and Roger Makley, IBM Bldg., Dayton, OH 45401, on this 19th day of September, 1986.